

HOUSE BILL NO. 683

INTRODUCED BY REINHART

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A FULL GUARDIAN MAY NOT CONSENT TO
5 THE WITHHOLDING OR WITHDRAWAL OF LIFE SUSTAINING TREATMENT OR TO A DO NOT
6 RESUSCITATE ORDER IF THE GUARDIAN DOES NOT HAVE CONSENT AUTHORITY PURSUANT TO THE
7 MONTANA RIGHTS OF THE TERMINALLY ILL ACT, ~~OR~~ THE LAWS PROVIDING FOR DO NOT
8 RESUSCITATE ORDERS, OR A COURT ORDER; AND AMENDING ~~SECTION~~ SECTIONS 50-9-106 AND
9 72-5-321, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **SECTION 1. SECTION 50-9-106, MCA, IS AMENDED TO READ:**

14 **"50-9-106. Consent by others to withholding or withdrawal of treatment.** (1) If a written consent to
15 the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician
16 or attending advanced practice registered nurse, the attending physician or attending advanced practice
17 registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

18 (a) has been determined by the attending physician or attending advanced practice registered nurse to
19 be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining
20 treatment; and

21 (b) has no effective declaration.

22 (2) The authority to consent or to withhold consent under subsection (1) may be exercised by the
23 following individuals, in order of priority:

24 (a) the spouse of the individual;

25 (b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children
26 who are reasonably available for consultation;

27 (c) the parents of the individual;

28 (d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult
29 siblings who are reasonably available for consultation; or

30 (e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for

1 consultation.

2 (3) A full guardian may consent or withhold consent under subsection (1) as provided in 72-5-321.

3 ~~(3)~~(4) If a class entitled to decide whether to consent is not reasonably available for consultation and
4 competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division
5 in a class does not authorize the next class to decide.

6 ~~(4)~~(5) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it
7 conflicts with the expressed intention of the individual.

8 ~~(5)~~(6) A decision of the attending physician or attending advanced practice registered nurse acting in
9 good faith that a consent is valid or invalid is conclusive.

10 ~~(6)~~(7) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an
11 individual known to the attending physician or attending advanced practice registered nurse to be pregnant so
12 long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining
13 treatment."

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15 **Section 2.** Section 72-5-321, MCA, is amended to read:

16 **"72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of
17 a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to
18 report the condition of the incapacitated person and of the estate that has been subject to the guardian's
19 possession and control, as required by the court or by court rule.

20 (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the
21 ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third
22 persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the
23 foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

24 (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction
25 relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward
26 and may establish the ward's place of residence within or outside of this state.

27 (b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and
28 maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard
29 to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing,
30 furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward

1 is in need of protection.

2 (c) A full guardian may give any consents or approvals that may be necessary to enable the ward to
3 receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not
4 authorize a full guardian to consent to the withholding or withdrawal of life sustaining treatment or to a do not
5 resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the
6 Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A FULL
7 GUARDIAN MAY PETITION THE COURT FOR AUTHORITY TO CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF
8 LIFE-SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER. THE COURT MAY GRANT THAT AUTHORITY ONLY UPON
9 FINDING THAT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT OR THE DO NOT
10 RESUSCITATE ORDER IS CONSISTENT WITH THE WARD'S WISHES TO THE EXTENT THAT THOSE WISHES CAN BE DETERMINED.

11 (d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

12 (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the
13 welfare of the ward to perform that person's duty;

14 (ii) receive money and tangible property deliverable to the ward and apply the money and property for
15 support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate
16 for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward
17 unless a charge for the service is approved by order of the court made upon notice to at least one of the next of
18 kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess
19 for the ward's needs.

20 (e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the
21 estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy
22 of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request
23 under 72-5-318.

24 (f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess
25 of those funds expended to meet current expenses for support, care, and education of the ward must be paid to
26 the conservator for management as provided in this chapter, and the full guardian must account to the
27 conservator for funds expended.

28 (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court
29 shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

30 (4) Any full guardian of one for whom a conservator also has been appointed shall control the custody

1 and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control
2 those aspects of the custody and care of the ward over which the limited guardian is given authority by the order
3 establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums
4 for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian
5 and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full
6 guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator
7 to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

8 (5) A full guardian or limited guardian may not involuntarily commit for mental health treatment or for
9 treatment of a developmental disability or for observation or evaluation a ward who is unwilling or unable to give
10 informed consent to commitment, except as provided in 72-5-322, unless the procedures for involuntary
11 commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the
12 rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

13 (6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian,
14 upon an order of the court and if there is no personal representative authorized to do so, may make necessary
15 arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial,
16 entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal
17 effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at
18 the time of the ward's death."

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